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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,360	09/24/2001	Gerald J. Ware	WAR1394.07A	8250
8156	7590	11/26/2003	EXAMINER	
JOHN P. O'BANION O'BANION & RITCHEY LLP 400 CAPITOL MALL SUITE 1550 SACRAMENTO, CA 95814			YEUNG, GEORGE CHAN PUI	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 11/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

### Office Action Summary

**Application No.**

09/963,360

**Applicant(s)**

WARE, GERALD J.

**Examiner**

George C Yeung

**Art Unit**

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

#### DETAILED ACTION

Applicant's election without traverse of the invention of Group II (claims 19-61) in Paper No. 5 is acknowledged.

Claims 24 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the following reason:

It is not clear what apparatus structure is intended by the limitation "nitrogen" recited in apparatus claims 24 and 29. Note that the limitation recited in these apparatus claims is a method limitation and thus it fails to further limit the subject matter of the previous apparatus claims in terms of positive structure.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-21, 23-26, 28 and 29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Juarez et al (WO 96/35340).

Claims 22 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Juarez et al (WO 96/35340). It would have been obvious to modify the ultrasonic-wave emitting means of Juarez et al such that the food products are exposed to ultrasound at frequency within the range of 20KHz to 100KHz for approximately 15 to 90 minutes since it is an obvious matter of routine optimization depending upon the type, size and quantity of the food products to be dehydrated.

Claims 30-34, 38-43, 47-52 and 56-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Juarez et al (WO 96/35340) in view of Meldrum. Juarez et al disclose the claimed apparatus except for the plurality of drying zones and the plurality of heat sources. However, Meldrum shows the conventional expedient of drying a food product by means of a drying system comprising a plurality of drying zones and a plurality of heat sources so as to be better able to control airflow direction and velocity, temperature, humidity, and other operating parameters (see Figure 4). Therefore, it would have been obvious to modify the apparatus of Juarez et al such that a plurality of heating zones and a plurality of heat sources are formed within the drying housing as per the teaching of Meldrum in order to be better able to control airflow direction and velocity, temperature, humidity, and other operating parameters.

Claims 35-37, 44-46 and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Juarez et al (WO 96/35340). It is not deemed that the features variously recited in dependent claims 35-37, 44-46 and 53-55 would define unobvious

subject matter over the teaching of Juarez et al in the absence of any new or unexpected results. The features recited in these dependent claims are considered to be obvious matters of structural design well within the skill of an ordinary artisan in the field of dehydration technology.


U.S. Patent 6,233,844 (the U.S. equivalent of WO 96/35340) is cited to show a dehydration device.

Any inquiry concerning this communication from the examiner should be directed to Examiner George C. Yeung whose telephone number is (703) 308-3848. The examiner can generally be reached on Monday-Friday from 10:30 a.m. to 7:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

G.C. Yeung/dh  
November 18, 2003

  
**GEORGE C. YEUNG**  
**PRIMARY EXAMINER**